

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO 121926
Issued to: Roy Floyd BRONZOVICH

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2161

Roy Floyd BRONZOVICH

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 30 March 1978, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida after hearings at Jacksonville, Florida, on 29 November 1977 and 9 January 1978, suspended Appellant's license for two months and further suspended it for three months on twelve months' probation upon finding him guilty of negligence. Six specifications of negligence had been alleged. The two specifications found proved alleged (1) that Appellant, while serving as operator aboard the Tug Boat ST2127, under authority of the captioned document, did on or about 14 August 1977 fail "to sound the vessel ST2127's general alarm prior to the moment of extremis [sic]," and (2) that Appellant, while serving as above, failed to maintain the vessel ST2127's double bottom fuel tanks and the after ballast tanks in a ballasted condition for optimum stability.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specifications.

The Investigating Officer introduced into evidence the testimony of twelve witnesses, thirteen documents, and 15 photos.

In defense, Appellant offered his own testimony.

Subsequent to the hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and the fifth and sixth specifications had been proved. He then entered an order of suspension for a period of two months, and further suspension for three months on twelve months' probation.

The decision was served on 31 March 1978. Appeal was timely filed on 19 April 1978 and perfected on 6 September 1978.

FINDINGS OF FACT

On 14 August 1977, Appellant was serving as operator of the Tug Boat ST2127, when it capsized in the Intracoastal Waterway near Jacksonville, Florida. Because of the disposition of this appeal, further findings are not necessary.

BASES OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. Appellant has argued three separate grounds for appeal. Because of the disposition of this appeal, only the first will be addressed, that challenging the jurisdiction for the proceeding.

APPEARANCE: Toole, Taylor, Milton & Joyner, Jacksonville, FL, by Almer W. Beale, II, Esq.

OPINION

I

Appellant contends that the Coast Guard lacked jurisdiction to proceed against his license because, at the time the Tug Boat ST2127 capsized, he was not operating it "under authority of" his Coast Guard issued license. With this contention I agree.

46 CFR 5.01-35 states, in part, "[a] person employed in the service of a vessel is considered to be acting under the authority of a license, certificate or document held by him either when the holding of such license, certificate or document is required by law or regulation or is required as a condition of employment." Hence, for jurisdiction to exist in this case, Appellant must have been required to hold his license by law or regulation, or as a condition of his employment.

The Tug Boat ST2127 and the barge it was towing, KSC-I, are owned outright by the National Aeronautics and Space Administration (NASA), an agency of the Federal Government. At the time of capsizing, both were being operated as "government furnished property" under a contract between the U.S. Air Force and Appellant employer, Fort Everglades Towing, Inc. Under the terms of this contract, both were used solely for a "public purpose." Hence, Appellant was operating a "public vessel," as defined at 46 CFR 4.03-40. As such, his vessel was subject neither to the inspection laws (46 U.S.C. 362), nor to the manning requirements of 46 U.S.C. 224a. therefore, the license held by Appellant was not required by either "law" or "regulation."

The Administrative Law Judge did find, however, that Appellant's license was required "as a condition of employment."

In reaching this conclusion the Administrative Law Judge construed provisions of the Air Force - Fort Everglades Towing contract as mandating the possession of a license by any civilian operating a publicly owned tug under the contract. It is the conclusion of the Administrative Law Judge which is in error.

The contract in question provided that the Government would furnish several vessels, including a "sixty-five' tug boat (ST2127), and the contractor would furnish two privately owned tug boats. The contract further provided that the contractor would "[o]perate, navigate, equip and crew all government and publicly owned or leased vessels assigned under this contract in accordance with Maritime law and applicable United States Coast Guard regulations," and that "vessel captains shall be appropriately licenses for type of equipment to be operated and for areas of required operation." Concededly, these two quoted provisions are somewhat ambiguous in that two interpretations reasonable are possible. The contract require either that all vessels be operated by personnel licensed for the size and type of vessel involved, without regard to the exemptions for public vessels, or that only the privately owned or leased vessels be operated by appropriately licensed personnel. Because of the language of the contract itself is ambiguous on this point, I am constrained to look beyond the written contract for assistance in interpreting it. It is apparent from testimony in the record that the towing company assigned its captains to operate Government furnished tugs without regard to whether those individuals held any licenses. Equally significant, both the NASA Technical Representative called by the Coast Guard Investigating Officer, and the Director of Operations for the towing company (who actually had signed the contract as the towing company representative) testified that they each interpreted the contract to require a licensed operator only on the privately furnished vessels. "Where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning." RESTATEMENT (SECOND) OF CONTRACTS §227(1) (Tentative Draft 1973). Because there is no reason to doubt the credibility of either, I must conclude that the Administrative Law Judge erred in finding that the holding of a Coast Guard issued license was a "condition of employment" for Appellant. Since neither law, regulation, nor his employer required Appellant to hold a license in order to operate the Tug Boat ST2127, he was not acting "under authority of" the license which he possesses. The Coast Guard therefore is without jurisdiction to proceed against his license in this matter.

ORDER

The order of the Administrative Law Judge dated at

Jacksonville, Florida, on 30 March 1978, is VACATED and the charge is DISMISSED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D. C., this 6th day of Sep 1979.

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